

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

APPLICATION OF NUVOX)	
COMMUNICATIONS OF MISSOURI,)	
INC. FOR APPROVAL OF AN)	
AMENDMENT TO ITS M2A)	
INTERCONNECTION AGREEMENT)	CASE NO. _____
WITH SOUTHWESTERN BELL)	
TELEPHONE COMPANY PURSUANT)	
TO § 252(e) OF THE)	
TELECOMMUNICATIONS)	
ACT OF 1996		

**APPLICATION FOR APPROVAL OF AMENDMENT
TO THE M2A INTERCONNECTION AGREEMENT
BETWEEN NUVOX COMMUNICATIONS OF MISSOURI, INC.
AND
SOUTHWESTERN BELL TELEPHONE COMPANY**

COMES NOW NuVox Communications of Missouri, Inc. ("NuVox") and, for its application for approval of an amendment ("the Amendment") to its Missouri 271 Agreement ("M2A") interconnection agreement with Southwestern Bell Telephone Company d/b/a SBC Missouri ("SBC Missouri") pursuant to § 252(e) of the Telecommunications Act of 1996 ("the Federal Act"), Section 392.240 RSMo, and 4 CSR 240-2.060, states to the Commission as follows:

I. Parties

1. NuVox is a competitive facilities-based telecommunications company duly incorporated and existing under and by virtue of the laws of the State of Delaware and authorized to do business in the State of Missouri as a foreign corporation. Its principal Missouri offices are currently located at 16090 Swingley Ridge Road, Suite 500, Chesterfield, Missouri 63017. NuVox (formerly known as Gabriel Communications of Missouri, Inc.) is an authorized provider

of intrastate switched and non-switched local exchange and interexchange telecommunications services in Missouri under certificates granted and tariffs approved by the Commission. NuVox is also an authorized provider of interstate telecommunications services in Missouri under the jurisdiction of the Federal Communications Commission. Its certificate of authority to conduct business in Missouri was filed in Case No. TA-99-173 and remains current.

2. All inquiries, correspondence, communications, pleadings, notices, orders and decisions relating to this Application should be directed to:

Carl J. Lumley
Leland B. Curtis
Curtis, Oetting, Heinz, Garrett & O'Keefe, PC
130 S. Bemiston, Suite 200
Clayton, Missouri 63105
Telephone: (314) 725-8788
Facsimile: (314) 725-8789
Email: clumley@cohgs.com
lcurtis@cohgs.com

and

Carol Keith
NuVox Communications
16090 Swingley Ridge Road, Suite 500
Chesterfield, Missouri 63017
Telephone: 636-537-7337
Facsimile: 636-728-7337
Email: ckeith@nuvox.com

3. SBC Missouri is a Texas limited partnership with its principal Missouri place of business located at One Bell Center, St. Louis, Missouri 63101. SBC Missouri is an incumbent local exchange carrier ("ILEC"), as defined in Section 251(h) of the Federal Act, and is a

noncompetitive large local exchange carrier as defined by Section 386.020 R.S.Mo. It is the successor to Southwestern Bell Telephone Company ("SWBT").

II. Allegations of Fact

4. NuVox presents to this Commission for approval an Amendment to its M2A Agreement with SBC Missouri, attached hereto as Exhibit 1, negotiated and executed pursuant to the terms of the Federal Act. All issues have been successfully negotiated and agreed upon. No arbitration of any issue is required.

5. The parties have agreed to supplement and amend their M2A Agreement to include an amendment that establishes a mutually acceptable method for charging for collocation DC power and related HVAC. As a result of this agreement, the parties have been able to resolve the dispute now pending between them and before the Commission on the subject (Case No. XC-2003-0421), and that complaint will be dismissed upon approval of the Amendment.

6. Except as modified by the Amendment, all other terms and conditions of the M2A Agreement between the parties shall remain unchanged and in full force and effect.

7. NuVox seeks the Commission's approval of the Amendment to its M2A Agreement consistent with the provisions of the Federal Act and Missouri law. The Amendment complies fully with § 252(e) of the Federal Act because it is non-discriminatory and consistent with the public interest, convenience and necessity.

8. NuVox respectfully requests that the Commission grant approval of the Amendment without change, suspension, or other delay in implementation. This is a bilateral Amendment, entered into as a result of negotiations and compromise between competitors and NuVox believes that procedures for review of the Amendment should be designed to permit

expeditious implementation thereof, consistent with the scope of review specified by the Federal Act and the Commission's applicable rules.

9. The applicable standard of review is set forth in § 252(e) of the Federal Act and provides as follows:

(e) APPROVAL BY STATE COMMISSION –

- (1) APPROVAL REQUIRED – Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. A State commission to which an agreement is submitted to shall approve or reject the agreement, with written findings as to any deficiencies.
- (2) GROUNDS FOR REJECTION – The State commission may only reject –
 - (A) an agreement (or any portion thereof) adopted by negotiation under subsection (a) if it finds that –
 - (i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or
 - (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience and necessity.

10. NuVox does not have any pending actions or unsatisfied final judgments or decisions against it from any state or federal agency or court which involve customer service or customer rates, which action, judgment or decision has occurred within three years of the date of this Application.

11. NuVox does not have any overdue annual reports or assessment fees.

IV. Relief Sought

WHEREFORE, NuVox respectfully requests that the Commission approve the presented Amendment to the M2A Interconnection Agreement between NuVox and SBC Missouri and grant additional relief as the Commission deems proper and reasonable.

Respectfully submitted,

/s/ Carl J. Lumley

Carl J. Lumley MBE 32869
Leland B. Curtis MBE 20550
Curtis, Oetting, Heinz, Garrett & O'Keefe, PC
130 S. Bemiston, Suite 200
Clayton, Missouri 63105
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/s/ Carol Keith (By Carl J. Lumley)

Carol Keith, #45065
NuVox Communications
16090 Swingley Ridge Road, Suite 500
Chesterfield, Missouri 63017
(636) 537-7337
(636) 728-7337 (FAX)
ckeith@nuvox.com

ATTORNEYS FOR NUVOX COMMUNICATIONS OF
MISSOURI, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document was served upon the parties listed below on this 12th day of November, 2003 by placing same in the U.S. Mail, postage prepaid.

/s/ Carl J. Lumley

Carl J. Lumley

Office of the Public Counsel
PO Box 7800
Jefferson City, Missouri 65102

Office of General Counsel
Missouri Public Service Commission
PO Box 360
Jefferson City, Missouri 65102

Legal Department
Southwestern Bell Telephone Company
One Bell Center, Room 3520
St. Louis, Missouri 63101-1976

STATE OF MISSOURI)
)
COUNTY OF ST. LOUIS) SS.

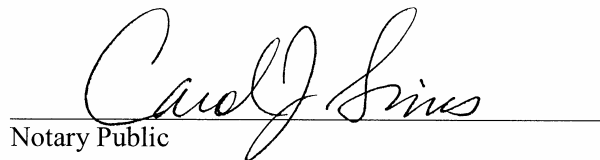
VERIFICATION

I, Edward J. Cadieux, first being duly sworn, state on my oath that I am over the age of twenty-one years, sound of mind, and the Executive Director, Regulatory and Public Affairs of NuVox Communications of Missouri, Inc. I am authorized to act on behalf of NuVox Communications of Missouri, Inc. regarding the foregoing Application. I have read the Application and I am informed and believe that the matters contained therein are true. Further, I hereby confirm that Carl J. Lumley, Leland B. Curtis, and Curtis, Oetting, Heinz, Garrett & O'Keefe, P.C., 130 S. Bemiston, Suite 200, Clayton, Missouri 63105, are authorized to sign all pleadings and documents necessary to obtain the decision of the Missouri Public Service Commission on the foregoing Application, and to represent NuVox Communications of Missouri, Inc. in this proceeding.



On this 12th day of November, 2003, before me, a Notary Public, personally appeared Edward J. Cadieux, and being first duly sworn upon his oath stated that he is over twenty-one years, sound of mind and the Executive Director, Regulatory and Public Affairs of NuVox Communications of Missouri, Inc., he signed the foregoing document as Executive Director, Regulatory and Public Affairs of NuVox Communications of Missouri, Inc., and the facts contained therein are true and correct according to the best of his information, knowledge and belief.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year above-written.


Notary Public

My Commission Expires:



CAROL J. SIMS
St. Louis County
My Commission Expires:
September 24, 2006

**COLLOCATION POWER AMENDMENT
TO THE INTERCONNECTION AGREEMENT UNDER
SECTIONS 251 AND 252 OF THE TELECOMMUNICATIONS ACT OF 1996
BETWEEN
SOUTHWESTERN BELL TELEPHONE, L.P. D/B/A SBC MISSOURI
AND
NUVOX COMMUNICATIONS OF MISSOURI, INC.**

This Collocation Power Amendment to the Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996 (the "Amendment") by and between Southwestern Bell Telephone, L.P., d/b/a SBC Missouri ("SBC Missouri") and NuVox Communications of Missouri, Inc. ("CLEC") is dated November 10, 2003.

WHEREAS, SBC Missouri and CLEC are parties to a certain Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996 ("Act") approved by the Missouri Public Service Commission ("State Commission"), as may have been amended prior to the date hereof (the "Agreement");

WHEREAS, the Parties want to amend the Agreement to establish an agreed methodology for charging for collocation DC Power and related HVAC, as set forth herein.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties agree as follows:

1. Unless otherwise defined herein, capitalized terms shall have the meanings assigned to such terms in the Agreement.
2. Pursuant to Attachment 13: Appendices Physical and Virtual Collocation of the Agreement, CLEC is purchasing all collocation arrangements pursuant to Missouri Local Access Tariff P.S.C. Mo. No. 42, Physical Collocation ("Tariff"), and the Parties intend that the Tariff continue to apply to all such arrangement(s) except as provided herein. This Amendment memorializes the Parties' bilateral agreement on how certain rates related to monthly recurring collocation DC Power charges (DC Power Consumption and related HVAC) shall be billed by SBC Missouri to CLEC to all such arrangement(s), and to any additional collocation arrangements (whether physical, virtual or cageless) that CLEC may establish during the term of the Amendment. Accordingly, this Amendment shall apply to any such existing or additional arrangement(s) only as to application of these monthly recurring DC power charges in accordance with the Amendment's provisions. The Amendment is not intended to constitute an interpretation, clarification or modification of the Tariff.
3. By executing this Amendment, CLEC represents and warrants that it at no time will draw more than 50% of the combined total capacity of the DC power leads (in amperes or "AMPs") provided by SBC Missouri for a collocation arrangement (the combined total capacity being the aggregate capacity of both leads for that collocation arrangement, including all "A" AMPs and all "B" AMPs). Based upon CLEC's representation and warranty and other good and valuable consideration as set forth herein, SBC Missouri shall prospectively bill the CLEC for DC collocation power consumption and HVAC as follows:
 - (a) For DC collocation power consumption, a monthly recurring rate of \$10.61 per AMP applied to fifty percent (50%) of the total provided capacity; and

EXHIBIT 1

- (b) For HVAC, a monthly recurring rate of \$14.62 per 10 AMPs, applied to fifty percent (50%) of the total provided capacity.

By way of example, where SBC Missouri has provisioned two (2) twenty (20) AMP DC power leads [for a combined total capacity of forty (40) AMPs], based upon CLEC's above representation and warranty SBC Missouri shall prospectively bill the CLEC the monthly recurring DC Power Consumption charge of \$10.61 per AMP for a total of twenty (20) AMPs (i.e., \$212.20 per month), and SBC Missouri shall prospectively bill CLEC the monthly recurring HVAC charge of \$14.62 per-each-ten (10) AMPs applied against twenty (20) AMPs (i.e., \$29.24 per month).

4. SBC Missouri has the right to periodically inspect and/or test the amount of DC power CLEC actually draws and, in the event CLEC is found to have breached the representation and warranty set forth in paragraph 3, to pursue remedies for breach of this Amendment and the Agreement.

5. The provisions of this Amendment shall remain effective until such time as the State Commission changes, by means of a final order issued in a cost proceeding establishing rates for collocation provided under 47 U.S.C. § 251(c)(6) applicable to all requesting telecommunications carriers, the monthly recurring rate(s) and billing procedure (including rate application) for SBC Missouri's collocation DC power, or until expiration or termination of this Amendment, whichever occurs first. If the foregoing is triggered by a cost proceeding changing rates for collocation provided under 47 U.S.C. § 251(c)(6) applicable to all requesting telecommunications carriers, then either Party may invoke the change of law/rate (or similar) provisions of the Agreement, as may be applicable, in accordance with such provisions. In the case of either triggering event, the provisions of this Amendment shall continue to apply until thereafter replaced by a successor interconnection agreement/amendment, as the case may be. By executing this Amendment, both Parties relinquish any right, during the term of the Amendment, to a different rate and billing procedure (including rate application) from the Effective Date of this Amendment until such time as the State Commission issues a final order in a cost proceeding changing the rates for collocation provided under 47 U.S.C. § 251(c)(6) applicable to all requesting telecommunications carriers, the monthly recurring rate(s) and billing procedure (including rate application) for SBC Missouri's collocation DC power.

6. Nothing in this Amendment shall be deemed or considered an admission on the part of SBC Missouri as to, or evidence of, the unreasonableness of the rates and elements for collocation DC power in SBC Missouri's Tariff, or of the manner in which SBC Missouri has applied or billed such rates, or any other aspect of its collocation power billing, all as existed prior to the making of this Amendment.

7. In connection with this Amendment and as part of an overall settlement, CLEC and SBC Missouri have agreed to and do hereby affirm that they mutually release and discharge each other from all claims which each Party may have against the other arising directly or indirectly out of, or relating in any way, to charges for DC collocation power and related HVAC. The billing arrangement described in Paragraphs 2, 3 and 4 ("Billing Arrangement"), above, is integrally related to the overall settlement and the mutual release and discharge. Said mutual release and discharge, and the Billing Arrangement are expressly contingent upon:

- 1) approval by the State Commission of the terms and conditions of this Amendment; and
- 2) dismissal with prejudice of CLEC's complaint or complaints with the State Commission arising directly or indirectly out of, or relating in any way to charges for DC collocation power ("Collocation Power Complaint(s)"), to the extent CLEC has filed such Collocation Power Complaint(s); and

- 3) an exchange of consideration between the Parties in connection with said settlement, including a payment from CLEC to SBC of a mutually agreed upon amount.

8. The effective date of this Amendment shall be the day upon which the State Commission approves this Amendment under Section 252(e) of the Act or, absent such State Commission approval, the date this Amendment is deemed approved by operation of law ("**Amendment Effective Date**"). In the event that all or any portion of this Amendment as agreed-to and submitted is rejected and/or modified by the State Commission, this Amendment shall be automatically suspended and, unless otherwise mutually agreed, the Parties shall expend diligent efforts to arrive at mutually acceptable new provisions to replace those rejected and/or modified by the State Commission; provided, however, that failure to reach such mutually acceptable new provisions within thirty (30) days after such suspension shall permit either Party to terminate this Amendment upon ten (10) days written notice to the other.

9. EXCEPT AS MODIFIED HEREIN, ALL OTHER TERMS AND CONDITIONS OF THE UNDERLYING AGREEMENT SHALL REMAIN UNCHANGED AND IN FULL FORCE AND EFFECT. This Amendment will become effective as of the Amendment Effective Date, and will terminate on the termination or expiration of the Agreement. This Amendment does not extend the term of the Agreement.

10. In entering into this Amendment, neither Party is waiving, and each Party hereby expressly reserves, any of the rights, remedies or arguments it may have at law or under the intervening law or regulatory change provisions in the underlying Agreement with respect to any orders, decisions, legislation or proceedings and any remands thereof, including, without limitation, its rights under the United States Supreme Court's opinion in *Verizon v. FCC*, et al, 535 U.S. 467 (2002); the D.C. Circuit's decision in *United States Telecom Association, et. al v. FCC*, 290 F.3d 415 (D.C. Cir. 2002); the FCC's Triennial Review Order, released on August 21, 2003; the FCC's Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, 16 FCC Red 9151 (2001), (rel. April 27, 2001), which was remanded in *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002); and/or the Public Utilities Act of Illinois, which was amended on May 9, 2003 to add Sections 13-408 and 13-409, 220 ILCS 5/13-408 and 13-409, and enacted into law ("Illinois Law") (the Parties also acknowledge and agree that the United States District Court for the Northern District of Illinois preliminarily enjoined the Illinois Commerce Commission from implementing the UNE ratemaking provisions of the Illinois Law and an appeal of that decision is pending).

11. This Amendment constitutes the entire amendment of the Agreement and supersedes all previous proposals, both verbal and written, regarding the subject matter covered by the Amendment. To the extent there is a conflict or inconsistency between the provisions of this Amendment and the provisions of the Agreement (including all incorporated or accompanying Appendices, Addenda and Exhibits to the Agreement), the provisions of this Amendment shall control and apply but only to the extent of such conflict or inconsistency. The Parties further acknowledge that the entirety of this Amendment and its provisions are non-severable, and are "legitimately related" as that phrase is understood under Section 252(i) of Title 47, United States Code.

12. This Amendment may be executed in counterparts, each of which shall be deemed an original but all of which when taken together shall constitute a single agreement.

IN WITNESS WHEREOF, each Party has caused this Amendment to be executed by its duly authorized representative.

NuVox Communications of Missouri, Inc.

Southwestern Bell Telephone L.P. d/b/a SBC
Missouri,

By: Edward J. Cadieux
Edward J. Cadieux
Printed: Edward J. Cadieux
Title: VP, Regulatory & Public Affairs
Date: November 7, 2003
AECN/OCN # 4891

By its Authorized Agent,
SBC Telecommunications, Inc.
By: Glen R. Sirles
Printed: Glen R. Sirles
Title ^{For/} President - Industry Markets
Date: 11-11-2003